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Attorneys for Plaintiff  
United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,

v.

JESUS ZEPEDA LOPEZ,  
Defendant.

**CASE NO. 1:20-CR-00099-ADA-BAM**

**STIPULATION TO CONTINUE  
STATUS CONFERENCE AND ORDER**

Date: September 13, 2023  
Time: 1:00 p.m.  
Honorable Barbara A. McAuliffe

The United States of America, by and through PHILLIP A. TALBERT, United States Attorney, and ARIN C. HEINZ, Assistant United States Attorneys, and the defendant, by and through Mr. David Torres, his attorney of record, hereby request to continue the status conference in this case from September 13, 2023 until September 27, 2023 at 1:00 p.m.

The Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive open endedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering and ends-of-justice continuance must set forth explicit findings on the record "either orally or in writing").

Ends-of-justice continuances are excludable only if "the judge granted such continuance on the

basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

This Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

The parties request that time be excluded between September 13, 2023 and September 27, 2023, for the following reasons:

1. The parties are in active plea negotiations to resolve this case. Mr. Torres met with his client multiple times to discuss the terms of the plea agreement and potentially filing a motion to suppress. In order to assess whether to file a motion to suppress, Mr. Torres requested the security camera footage from the defendant’s residence that was in state law enforcement custody. The government requested the footage from state authorities and provided the security camera footage to Mr. Torres on July 31, 2023.
2. Mr. Torres reviewed the security camera footage and does not intend to file a motion to suppress. Thereafter, the parties reengaged in plea discussions, with Mr. Torres proposing new terms to the previously offered plea.
3. On September 5, 2023, based on these continued discussions between the parties, the government sent an updated plea offer to Mr. Torres. The parties believe in good faith this case can be resolved through a plea. If the defendant does not accept the plea offer, the parties will be prepared to propose a trial date on September 27, 2023.
4. The parties seek to set a status conference for September 27, 2023 in order to ensure sufficient time for Mr. Torres to present the new plea offer to the defendant. The proposed status conference date represents the earliest date that counsel is available thereafter, taking into account counsel’s schedule and commitments to other clients, and

1 the need for preparation in the case and further investigation.

2 The parties further believe that time should be excluded, in that failure to grant the requested  
3 case schedule would unreasonably deny the defendants continuity of counsel, and unreasonably deny  
4 both the defendants and the government the reasonable time necessary for effective preparation, taking  
5 into account the parties' due diligence in prosecuting this case. 18 U.S.C. Section 3161(h)(7)(B)(iv).  
6 Based on the above-stated findings, the ends of justice served by the schedule as requested outweigh the  
7 interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial  
8 Act. Therefore, the parties request that the Court exclude the time until the new hearing date from  
9 calculations under the Speedy Trial Act.

10 Dated: September 6, 2023

PHILLIP A TALBERT  
United States Attorney

11  
12 /s/ Arin C. Heinz

ARIN C. HEINZ

Assistant United States Attorney

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15 DATED: September 6, 2023

/s/ David Torres

DAVID TORRES

Attorney for Defendant Jesus Zepeda Lopez

**ORDER**

IT IS HEREBY ORDERED that the status conference in this case be continued from September 13, 2023, until **September 27, 2023, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. If the parties do not resolve the case in advance of the next status conference, they shall be prepared to set a trial date at the status conference hearing.

IT IS FURTHER ORDERED THAT the ends of justice served by the schedule set forth herein as requested outweigh the interest of the public and the defendants in a trial within the original date prescribed by the Speedy Trial Act for the reasons stated in the parties' stipulation. For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of September 13, 2023 until September 27, 2023, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) because it results from a continuance granted by the Court at the parties' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO ORDERED.

Dated: September 6, 2023

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE